



VIOLATIONS, POLITICS, AND THE APPLICABILITY OF INTERNATIONAL LAW: IS INTERNATIONAL LAW DEAD?

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Abstract

The contemporary of international relations are increasingly marked by various violations and instances of non-compliance with international law, particularly by powerful states. This phenomenon has given rise to the perception that international law has lost its binding force or is no longer relevant. This article addresses two main issues: whether violations and non-compliance can be understood as signs of the “death” of international law from the perspective of Hans Kelsen’s theory of norms, and how the political nature of international law affects its applicability and function, particularly for Indonesia. This study employs a normative legal research method with a conceptual and analytical approach. The analysis is conducted using Hans Kelsen’s Pure Theory of Law as the primary framework, particularly regarding the distinction between fact (sein) and norm (sollen) as well as the concept of legal validity, which is then supplemented by critical and constructivist perspectives on the relationship between law, politics, and power. The research findings indicate that violations do not signify the absence or demise of international law. On the contrary of that, violations actually presuppose the existence of the violated norm and thus affirm the validity of international law as a normative order. Furthermore, the political nature of international law does not negate its legal character; rather, it shapes international law as a normative instrument used to legitimize, limit, and direct the exercise of power within the international community. For Indonesia, international law remains a vital instrument for advancing national interests and building legitimacy within a global order that is not entirely equitable.

Keywords: *International Law; Legal Validity; Normative Theory; Hans Kelsen; Politics of International Law; Indonesia.*

I. INTRODUCTION

International law is normatively designed to regulate state behavior to maintain global peace and stability through principles such as the prohibition on the use of force, respect for sovereignty, and adherence to international obligations. However, contemporary practice demonstrates repeated violations—ranging from the use of force without a Security Council mandate to the abandonment of international commitments—often without decisive sanctions. The 2003 invasion of Iraq, for example, demonstrated the Security Council's limitations in maintaining a unified

approach to the prohibition on the use of force.¹ In the area of *jus ad bellum*, inconsistencies and differing interpretations across states further reinforce the impression of normative incoherence.² This situation gives rise to the perception that international law is fragile or ineffective. However, the literature suggests that non-compliance does not necessarily signal legal collapse, as states retain reputational and rational incentives to comply with international norms,³ and even violations in some contexts can trigger the evolution and refinement of norms.⁴ Thus, the problem of the effectiveness of international law cannot be simply reduced to a sign of the law's demise, but rather reflects the complex interaction between norms and state behavior.

The gap between *das sollen* and *das sein* lies at the heart of the issue of the effectiveness of international law. Normatively, international law presupposes order and compliance; empirically, violations persist, often selectively. However, to conclude legal failure solely from the fact of non-compliance equates validity with effectiveness. As explain by Howse and Teitel, Hans Kelsen explicitly distinguished between the two, asserting that legal validity is a normative concept that is not identical to the success of its empirical application.⁵ Martti Koskenniemi, on the other hand, demonstrates that compliance with international law is always in tension between normative ideals and the power structures that influence them.⁶ Christian Reus-Smit's constructivist approach extends this analysis by emphasizing that international norms are historically formed to regulate and limit the exercise of power in international society.⁷ Thus, the problem of compliance cannot be understood linearly as mere obedience or violation, but rather as a complex interaction between norms, power, and the historical context that shapes the practice of international law. Although the literature has examined the relationship between norms, power, and violation, there is still a tendency to equate violation with the death of international law, particularly in the context of developing countries within an asymmetrical global structure. This article departs from this gap.

This research aims to answer two main questions: (1) whether state violations and non-compliance can be understood as signs of the death of international law from the perspective of Hans Kelsen's norm theory; and (2) how the political nature of international law influences its applicability and its implications for Indonesia's

¹ Jane E. Stromseth, "Law and Force After Iraq: A Transitional Moment," *American Journal of International Law* 97, no. 3 (July 27, 2003): 628–42, doi:10.2307/3109848.

² Monica Hakimi and Jacob Katz Cogan, "The Two Codes on the Use of Force," *European Journal of International Law* 27, no. 2 (May 26, 2016): 257–91, doi:10.1093/ejil/chw015.

³ Andrew T. Guzman, "A Compliance-Based Theory of International Law," *California Law Review*, 2002, doi:10.2307/3481436.

⁴ Eric A. Posner and Alan O. Sykes, "Efficient Breach of International Law: Optimal Remedies, 'Legalized Noncompliance,' and Related Issues," *Michigan Law Review* 110, no. 2 (2011), doi:10.2139/ssrn.1780463; Max Lesch and Nina Reiners, "Informal Human Rights Law-Making: How Treaty Bodies Use 'General Comments' to Develop International Law," *Global Constitutionalism* 12, no. 2 (July 7, 2023): 378–401, doi:10.1017/S2045381723000023.

⁵ Robert Howse and Ruti Teitel, "Beyond Compliance: Rethinking Why International Law Really Matters," *Global Policy* 1, no. 2 (May 7, 2010): 127–36, doi:10.1111/j.1758-5899.2010.00035.x.

⁶ *Ibid.*

⁷ Peter Sutch, "Normative IR Theory and the Legalization of International Politics: The Dictates of Humanity and of the Public Conscience as a Vehicle for Global Justice," *Journal of International Political Theory* 8, nos. 1–2 (April 1, 2012): 1–24, doi:10.3366/jipt.2012.0023.

position. Theoretically, this article offers a more precise normative reading of the concept of the applicability of international law; practically, it confirms the relevance of international law as a strategic instrument for Indonesia in an unequal global order.

II. RESEARCH METHOD

This study employs normative legal research, focusing on the analysis of legal norms, concepts, doctrines, and principles concerning the validity of international law in the context of state violations and non-compliance. It adopts conceptual and analytical approaches to examine Hans Kelsen's theory of legal norms, particularly the distinction between *sein* and *sollen*, the concept of legal validity, and the relationship between validity and effectiveness. The analysis is further complemented by critical and constructivist perspectives on international law to explore the interaction between law, politics, and power within international society. The research relies on primary legal materials, including international legal instruments, and secondary legal materials consisting of books, journal articles, and scholarly writings on international legal theory. These materials are analysed qualitatively using a descriptive-analytical method to address the research questions concerning the validity of international law and the implications of its political character in contemporary international relations.

III. ANALYSIS AND DISCUSSION

A. Violations and Applicability of International Law from Hans Kelsen's Perspective

The perception, that international law is “dead”, generally stems from the fact that its norms are frequently violated by states, particularly powerful ones. This perspective equates the validity of law with the level of factual compliance, as if law exists only to the extent that it is obeyed. From the perspective of Hans Kelsen's pure legal theory, this assumption constitutes a fundamental conceptual error. Kelsen asserted that legal validity is not synonymous with its effectiveness, and that the enforceability of a norm depends not on the level of factual compliance but rather on its position as part of a presupposed binding normative order.⁸ Contemporary literature also demonstrates, that international law indeed operates within a structure that relies heavily on voluntary compliance and reputational mechanisms, rather than on centralized enforcement.⁹ However, this dependence does not imply the absence of law. International norms have been shown to possess significant resilience and adaptive capacity; violations often trigger processes of reinterpretation and development of norms rather than eradication.¹⁰ Thus, equating violations with the death of international law not only simplifies the reality of international law but also ignores its normative and dynamic nature.

The argument that international law is “dead” due to violations is fundamentally rooted in the assumption of sociological positivism, which equates law with its empirical effectiveness. Within this framework, a norm is considered law only to the

⁸ Hans Kelsen, “Pure Theory of Law (1934),” 1967, 211.

⁹ Michael Bothe, “Compliance in International Law,” in *International Law* (Oxford University Press, 2020), doi:10.1093/obo/9780199796953-0213.

¹⁰ Sarah V. Percy and Wayne Sandholtz, “Why Norms Rarely Die,” *European Journal of International Relations* 28, no. 4 (December 21, 2022): 934–54, doi:10.1177/13540661221126018.

extent that it is consistently obeyed or enforced. However, this approach has been widely criticized for simplifying the nature of international law. The development of the “empirical turn” in the study of international law has shown that legal effectiveness depends on specific institutional, political, and reputational conditions, not solely on the level of absolute compliance.¹¹ Furthermore, normative theoretical frameworks—such as those developed by Kelsen—affirm that the validity of international law is not identical to its factual effectiveness.¹² Even from a rationalist perspective, international law can be understood as a focal point of coordination or strategic equilibrium in which states retain incentives to comply with norms for long-term cooperative benefits.¹³ Thus, equating violations with the death of international law is not only reductionist but also ignores the normative, institutional, and strategic dimensions that underpin its survival. Therefore, the problem of violations cannot be resolved through an empirical reduction to compliance, but rather requires an analysis of the normative foundations and coordinative structure of international law itself.

Kelsen asserted a clear ontological distinction between the world of facts (*sein*) and the world of norms (*sollen*), a distinction rooted in the Kantian tradition and foundational to his Pure Theory of Law.¹⁴ For Kelsen, law does not serve to describe empirical reality, but rather to establish prescriptive standards for what ought or should not be done. Therefore, he stated that “the rule of law does not say, as the law of nature does: when A is, ‘is’ B; but when A is, B ‘ought’ to be, even though B perhaps actually is not”.¹⁵ The methodological consequences of this distinction are crucial: legal science does not judge law based on its factual effectiveness, but rather on its normative validity within a legal system.¹⁶ Thus, non-compliance with a norm does not automatically invalidate its validity, because legal validity does not depend on social facts, but rather on its position within a binding normative order.¹⁷ Even in judicial practice, the separation between questions of fact and questions of law reflects the fundamental distinction between *sein* and *sollen*, which asserts that law continues to operate as a normative structure regardless of the empirical reality that violates it.¹⁸

This distinction between *sein* and *sollen* led Kelsen to his central thesis that the validity of a legal norm is not identical to its effectiveness. He explicitly stated that “the validity of a legal norm is not identical with its effectiveness”.¹⁹ Within the framework of Pure Theory of Law, the validity of a norm stems from its position within a coherent

¹¹ Gregory Shaffer, “The New Legal Realist Approach to International Law,” *Leiden Journal of International Law* 28, no. 2 (2015): 189–210, doi:10.1017/s0922156515000035.

¹² C. Leben, “Hans Kelsen and the Advancement of International Law,” *European Journal of International Law* 9, no. 2 (January 1, 1998): 287–305, doi:10.1093/ejil/9.2.287.

¹³ J. D. Ohlin, “Nash Equilibrium and International Law,” *European Journal of International Law* 23, no. 4 (November 1, 2012): 915–40, doi:10.1093/ejil/chs060.

¹⁴ Eugenio Bulygin, “An Antimony in Kelsen’s Pure Theory of Law*,” *Ratio Juris* 3, no. 1 (March 2, 1990): 29–45, doi:10.1111/j.1467-9337.1990.tb00049.x.

¹⁵ Kelsen, “Pure Theory of Law (1934).”

¹⁶ Nicoletta Bersier Ladavac, “*Sein* and *Sollen*, ‘Is’ and ‘Ought’ and the Problem of Normativity in Hans Kelsen,” 2019, 29–43, doi:10.1007/978-3-030-18929-7_3.

¹⁷ Hans Kelsen, “On the Basic Norm,” *California Law Review* 47, no. 1 (1959), doi:10.2307/3478775.

¹⁸ Michel Troper, “The Fact and the Law,” 1990, 22–37, doi:10.1007/978-94-015-7875-2_3.

¹⁹ Kelsen, “Pure Theory of Law (1934),” 211.

normative order, not from the degree of factual compliance with that norm.²⁰ Thus, a legal norm remains valid as long as it is part of a recognized legal system, regardless of how frequently it is violated. This thesis has particular relevance in the context of international law, where violations frequently occur without consistent enforcement. Several scholars have asserted that the validity of an international norm does not depend on its empirical effectiveness, but rather on its existence within a framework of international law accepted as binding. This perspective allows international law to maintain its normative integrity and authority even in the face of repeated non-compliance (Mann, 1956). Therefore, persistent violations do not necessarily negate the nature of international law but rather test the resilience of its normative structure. Furthermore, Kelsen explicitly rejects the view that violation (*delict*) constitutes a denial of the law.

In Pure Legal Theory, legal norms are not descriptive, but rather prescriptive and hypothetically structured: they link a factual condition to a normative consequence in the form of a sanction. Thus, an act is considered a delict not because of its factual nature, but because legal norms link it to a coercive act as its consequence. As Kelsen emphasizes, "a definite action or refrainment is a delict because it is connected with a coercive act, that is, with a sanction as its consequence".²¹ This perspective emphasizes that violations are not something external to the legal system, but rather part of its internal mechanisms. According to Kelsen, a legal system is a coercive normative order, in which norms function as conditional commands linking certain behaviors to sanctions.²² This hypothetical structure explains that law does not presuppose perfect compliance but rather regulates the consequences of non-compliance.²³ Therefore, in the context of international law, violations do not prove the absence of law, but rather demonstrate that the norm continues to operate as a basis for imputing responsibility and justifying coercive action.

This normative view finds consistent reinforcement in international legal doctrine as developed in Indonesian literature. Atip Latipulhayat asserts that a state's non-compliance with international law does not nullify the validity of the violated norm, but rather gives rise to legal consequences in the form of state responsibility and dispute resolution mechanisms.²⁴ In other words, violations are anticipated within the normative structure of international law itself. The concept of state responsibility is a central element in this system, where violations of international obligations give rise to obligations of reparation or restoration.²⁵ This practice is evident in various contexts, including the handling of transboundary pollution such as haze in the ASEAN region,

²⁰ Joshua Paine, "Kelsen, Legal Normativity, and Formal Justice in International Relations," *Leiden Journal of International Law* 26, no. 4 (December 8, 2013): 1037–53, doi:10.1017/S092215651300054X.

²¹ Kelsen, "Pure Theory of Law (1934)," 111.

²² Stanley L. Paulson, "Hans Kelsen's Earliest Legal Theory: Critical Constructivism," *The Modern Law Review* 59, no. 6 (November 18, 1996): 797–812, doi:10.1111/j.1468-2230.1996.tb02695.x.

²³ Alexandre Travessoni Gomes Trivisonno, "A Teoria Da Estrutura Hipotética Das Normas Jurídicas de Kelsen: Características, Evolução e Balanço de Sua Importância," *Revista Brasileira de Estudos Políticos*, no. 121 (2020), doi:10.9732/2020.V121.773.

²⁴ Atip Latipulhayat, *Hukum Internasional: Sumber-Sumber Hukum* (Jakarta: Sinar Grafika, 2021), 6–8.

²⁵ Nicole Scicluna, "5. Compliance and Enforcement in International Law," in *The Politics of International Law* (Oxford University Press, 2021), 91–118, doi:10.1093/hepl/9780198791201.003.0005.

which gave rise to regional instruments such as the ASEAN Agreement on Transboundary Haze Pollution.²⁶ Although the international legal system is decentralized and lacks a single coercive authority, dispute resolution mechanisms and responsibility regimes demonstrate that international law is not undermined by violations, but rather operates through the normative consequences inherent in those violations.²⁷ Thus, from both a doctrinal and practical perspective, violations are not evidence of the absence of law, but rather part of how international law maintains its integrity and continuity as a normative order.

Therefore, both from Hans Kelsen's perspective and in the doctrine of international law as explained by these opinions, violations cannot be understood as the death of international law. Rather, violations confirm that these norms are still recognized as standards for legal assessment. As long as states – even when violating them – still feel the need to justify their actions in legal language, international law remains alive as a normative order that operates amidst the tension between norms and power.

B. Politics, Norms, and the Struggle for Meaning in International Law

If Hans Kelsen's perspective asserts that violations do not necessarily nullify the validity of international law, the next question is how to understand the fact that international law always operates within a sphere of interests and power dynamics. This is where Martti Koskenniemi's critique gains relevance. Koskenniemi shows that international law is never completely neutral, but rather operates in a constant tension between claims of normative objectivity and the political interests of states. International law, he argues, is not simply a set of technical rules, but a normative language whose meaning is constantly contested by international actors. The fragmentation of international regimes – such as the emergence of autonomous frameworks in the field of global trade – reflects how states shape and use legal structures to advance their political agendas.²⁸ This close interaction between law and politics is also reflected in the classic debate between normative legal theory and political realism, which demonstrates that international legal norms do not arise in a vacuum but are shaped through complex political processes.²⁹ Thus, criticism of the neutrality of international law is not an argument that law does not exist, but rather an acknowledgment that international law is always in an arena of struggles for legitimacy and interests.

²⁶ Deni Bram, "Pertanggungjawaban Negara Terhadap Pencemaran Lingkungan Transnasional," *Jurnal Hukum Ius Quia Iustum* 18, no. 2 (2011): 193–211, doi:10.20885/iustum.vol18.iss2.art3; Syifa Gheana, "Pertanggungjawaban Indonesia Dalam Menangani Pencemaran Asap Lintas Batas Ditinjau Dari Asean Agreement On Transboundary Haze Pollution (AATHP)," *LITRA: Jurnal Hukum Lingkungan, Tata Ruang, Dan Agraria* 2, no. 2 (April 30, 2023): 170–88, doi:10.23920/litra.v2i2.1186.

²⁷ Fajri Matahati Muhammadin, "Can International Law Be Enforced Towards Its Subjects Within The International Legal Order?," *Jurnal Hukum Ius Quia Iustum* 21, no. 2 (April 2014): 175–202, doi:10.20885/iustum.vol21.iss2.art2.

²⁸ A. Lindroos, "Dispelling the Chimera of 'Self-Contained Regimes' International Law and the WTO," *European Journal of International Law* 16, no. 5 (November 1, 2005): 857–77, doi:10.1093/ejil/chi148.

²⁹ Filipe dos Reis and Janis Grzybowski, "The Matrix Reloaded: Reconstructing the Boundaries between (International) Law and Politics," *Leiden Journal of International Law* 34, no. 3 (September 19, 2021): 547–70, doi:10.1017/S0922156521000200.

However, recognizing the political nature of international law does not mean that it loses its legal character. On the contrary, as Koskenniemi emphasizes, international law functions as a normative arena where states justify, challenge, and critique the use of power. States do not abandon international law when acting on political interests; rather, they engage in strategic interpretations to support their claims.³⁰ The resilience of the boundaries between law and politics demonstrates that the two influence each other without being mutually exclusive.³¹ Even when powerful states interpret or limit their commitments on the basis of sovereignty – as Goldsmith & Levinson note – they remain engaged within the framework of legal argumentation, not outside it.³² Regime fragmentation and the emergence of “self-contained regimes” reflect ongoing negotiations over the meaning of law, not the disintegration of the international legal system.³³ Thus, politics does not kill international law; it instead demonstrates that law remains a language of legitimacy that cannot be completely abandoned, even by the most powerful states.³⁴ International law lives in debate, reinterpretation, and the struggle for legitimacy.

This view can be deepened through Christian Reus-Smit's constructivist approach, which rejects the reduction of international legal norms to merely reflecting the material interests of powerful states.³⁵ From a constructivist perspective, international norms and institutions are formed historically through social interactions and shared understandings among members of the international community.³⁶ Norms are not born neutrally, but develop in response to the need for order and accountability within the international community.³⁷ Thus, international law is not simply a product of the dominance of power, but rather the result of normative processes that both shape and constrain state behavior. Norms serve to discipline state actions and place them within a framework of collective accountability, so the use of power must always be justified in the language of shared legitimacy. Even when powerful states attempt to test the limits of norms, the international community can act as a normative “firewall” that prevents the complete erosion of fundamental principles.³⁸ This approach

³⁰ Martti Koskenniemi, “The Politics of International Law-20 Years Later,” *The European Journal of International Law* 20, no. 1 (2009): 7–19, doi:10.1093/ejil/chp006.

³¹ dos Reis and Grzybowski, “The Matrix Reloaded: Reconstructing the Boundaries between (International) Law and Politics.”

³² Jack Goldsmith and Daryl Levinson, “Law for States: International Law, Constitutional Law, Public Law,” *Harvard Law Review*, 2009.

³³ Lindroos, “Dispelling the Chimera of ‘Self-Contained Regimes’ International Law and the WTO.”

³⁴ Peter Fitzpatrick, “‘Gods Would Be Needed...’: American Empire and the Rule of (International) Law,” *Leiden Journal of International Law* 16, no. 3 (September 30, 2003): 429–66, doi:10.1017/S0922156503001237.

³⁵ Christian Reus-Smit, “The Politics of International Law,” in *The Politics of International Law*, ed. Christian Reus-Smit (New York: Cambridge University Press, 2004), 14–44.

³⁶ Rodger A. Payne, “Persuasion, Frames and Norm Construction,” *European Journal of International Relations* 7, no. 1 (March 1, 2001): 37–61, doi:10.1177/1354066101007001002.

³⁷ Jason Ralph, “What Should Be Done? Pragmatic Constructivist Ethics and the Responsibility to Protect,” *International Organization* 72, no. 1 (December 10, 2018): 173–203, doi:10.1017/S0020818317000455.

³⁸ Vincent Charles Keating, “Membership Has Its Privileges: Targeted Killing Norms and the Firewall of International Society,” *International Studies Quarterly* 66, no. 3 (July 18, 2022), doi:10.1093/isq/sqac040.

demonstrates that international law is dynamic and evolutionary: it can change and adapt, but it continues to function as a normative structure that shapes expectations and accountability within the international system. Thus, the politicization of international law cannot be understood as a sign of its normative weakness, but rather as an inherent consequence of its function in regulating global power relations. The boundary between law and politics is never entirely clear; the two shape and influence each other.³⁹ In practice, states continue to use international law as a framework of legitimacy to justify or deny actions. As Koskenniemi points out, legal definitions and interpretations are often used strategically to navigate international situations.⁴⁰ This means that international law does not eliminate politics, but rather binds it within a specific normative language. States may act based on their national interests, but these interests must be formulated in legal terms to gain legitimacy on the international stage.⁴¹ It is precisely at this point that international law's normative power operates: it provides an argumentative structure that forces power to appear legitimate, accountable, and open to criticism.

The political nature of international law becomes more understandable when linked to its fundamentally coordinative and decentralized character. Unlike national law, which is subordinate and relies on centralized coercive authority, international law operates within a horizontal structure that positions states as formally equal sovereign entities.⁴² The absence of a global government is often mistaken for the absence of law, but this structure actually reflects the reality of a pluralistic international society. Within this order, international law does not function to subjugate states, but rather to coordinate their actions through agreements, treaties, and dispute resolution mechanisms.⁴³ This coordinative character allows states to align interests on cross-border issues such as security, trade, and the environment.⁴⁴ Thus, decentralization is not a normative weakness, but rather a structural prerequisite for the functioning of international law in a world of sovereign states. The implication of this horizontal and decentralized structure is that the effectiveness of international law is heavily influenced by political dynamics and the willingness of states to uphold shared norms. States are both creators and subjects of international law, so in practice they also

³⁹ dos Reis and Grzybowski, "The Matrix Reloaded: Reconstructing the Boundaries between (International) Law and Politics."

⁴⁰ Martti Koskenniemi, "Miserable Comforters: International Relations as New Natural Law," *European Journal of International Relations* 15, no. 3 (2009), doi:10.1177/1354066109338229.

⁴¹ Alain Zysset, "Right, Crime, and Court: Toward a Unifying Political Conception of International Law," *Criminal Law and Philosophy* 12, no. 4 (December 16, 2018): 677-93, doi:10.1007/s11572-017-9450-9.

⁴² Jeremy Waldron, "Are Sovereigns Entitled to the Benefit of the International Rule of Law?," *European Journal of International Law* 22, no. 2 (May 2011): 315-43, doi:10.1093/ejil/chr031; Bardo Fassbender, "The State's Unabandoned Claim to Be the Center of the Legal Universe," *International Journal of Constitutional Law* 16, no. 4 (December 31, 2018): 1207-14, doi:10.1093/icon/moy098.

⁴³ Anthony D'Amato, "Evolution of International Law: Two Thresholds, Maybe a Third," in *AAAI Fall Symposium - Technical Report*, vol. FS-09-03, 2009; Liam Murphy, "Law Beyond the State: Some Philosophical Questions," *European Journal of International Law* 28, no. 1 (February 1, 2017): 203-32, doi:10.1093/ejil/chx004.

⁴⁴ Carmen E. Pavel, "The Rule Of Law And The Limits Of Anarchy," *Legal Theory* 27, no. 1 (March 4, 2021): 70-95, doi:10.1017/S1352325221000045.

interpret and assess their own compliance with the norms that bind them.⁴⁵ In this context, compliance is often strategic, part of a rational calculation to obtain mutual cooperative benefits.⁴⁶ However, dependence on political dynamics and interests does not erase the normative nature of international law. As seen in the development of norms such as the Responsibility to Protect, political contestation does not necessarily kill norms but rather becomes part of the process of strengthening and affirming their validity.⁴⁷ The relationship between law and power is interdependent: power influences the application of law, but law provides a framework that limits and structures the use of that power.⁴⁸ Thus, politics is not the opposite of international law, but rather an arena in which law is tested, defended, and—in some cases—strengthened through processes of argumentation and legitimation.⁴⁹

Skeptical arguments against the validity of international law generally stem from three main positions. First, the realist perspective, which views international law as an epiphenomenon of power, so that norms are valid only to the extent that they align with the interests of powerful states. Second, the enforcement gap argument, which states that without a centralized coercive authority, international law does not meet the criteria for a true legal system.⁵⁰ Third, the hegemonic critique, which views international law as an instrument of domination, used by powerful states to institutionalize their preferences in the form of global norms. However, these three arguments do not automatically prove the demise of international law. The reality that norms can be misused or interpreted strategically actually indicates that they retain significant legitimacy; if law were truly irrelevant, states would not need to frame their actions in the language of legality. Similarly, the absence of a central authority does not eliminate the legal nature of an order, but rather demonstrates a different coordinative model than national law. Even in hegemonic contexts, international law continues to provide argumentative space for developing states to make claims, establish legitimacy, and demand accountability. Thus, realist and institutional skepticism does not lead to the conclusion that international law is dead, but rather highlights the complexity of the relationship between norms and power in the international system.

Thus, the relationship between politics and international law cannot be understood in an antagonistic framework, as if one negates the other. On the contrary, international law acquires its normative significance through its involvement in global power dynamics. Fragmentation, strategic interpretation, and contestation of norms are not signs of disintegration, but rather expressions of the vibrant nature of a legal order operating within a pluralistic and sovereign international society. As long as states

⁴⁵ J. A. C. Salcedo, "Reflections on the Existence of a Hierarchy of Norms in International Law," *European Journal of International Law* 8, no. 4 (January 1, 1997): 583–95, doi:10.1093/oxfordjournals.ejil.a015608.

⁴⁶ Ohlin, "Nash Equilibrium and International Law."

⁴⁷ Jennifer M Welsh, "Norm Robustness and the Responsibility to Protect," *Journal of Global Security Studies* 4, no. 1 (January 1, 2019): 53–72, doi:10.1093/jogss/ogy045.

⁴⁸ Fitzpatrick, "'Gods Would Be Needed...': American Empire and the Rule of (International) Law."

⁴⁹ dos Reis and Grzybowski, "The Matrix Reloaded: Reconstructing the Boundaries between (International) Law and Politics."

⁵⁰ Goldsmith and Levinson, "Law for States: International Law, Constitutional Law, Public Law."

continue to feel the need to frame their interests in the language of legality, offer normative justifications, and respond to criticism within a legal framework, international law continues to function as a legitimizing structure that cannot be completely ignored. Politics does shape the international legal arena, from the perspective of political realism, but it is precisely within this arena that law demonstrates its resilience as a framework for assessing, constraining, and guiding state action within the international system.

For Indonesia, this understanding holds strategic significance. As a developing country operating within an unbalanced global structure, Indonesia has a direct interest in maintaining international law as a shared normative language. While international law may not always be able to restrain the actions of powerful states, without it, states in relatively weaker positions lose the tools to assert claims, establish legitimacy, and demand accountability. Therefore, rather than being cynical about the politicization of international law, Indonesia needs to consciously and strategically utilize international law as a means to navigate and, to the extent possible, limit power imbalances in the global order.

Practically, this strategy can be seen in a number of Indonesian foreign policy positions. On the South China Sea issue, Indonesia consistently frames its stance within the 1982 United Nations Convention on the Law of the Sea (UNCLOS), emphasizing the importance of the maritime law regime as a basis for dispute resolution and rejecting unilateral claims inconsistent with international law. In the context of support for Palestine, Indonesia also bases its position on the principle of the right to self-determination and the prohibition of annexation of territory through force, rather than solely on political solidarity. Similarly, within the ASEAN framework, Indonesia's involvement in the ASEAN Agreement on Transboundary Haze Pollution demonstrates how regional norms are used to regulate cross-border issues rooted in national sovereignty. Even within the global trade regime through the WTO dispute settlement mechanism, Indonesia utilizes legal forums to defend its national interests in an argumentative and structured manner. These examples demonstrate that for Indonesia, international law is not merely an abstract normative commitment, but rather a strategic instrument that allows developing countries to articulate their interests in the language of global legitimacy. Precisely because international law is normative, coordinative, and argumentative, it provides room for maneuver unavailable in pure power politics.

IV. CONCLUSION

First, state violations and non-compliance with international law cannot be understood as a sign of the demise of international law. From Hans Kelsen's normative perspective, the validity of law is not determined by the level of factual compliance, but rather by its existence as a system of norms presupposed as binding. The distinction between fact (*sein*) and norm (*sollen*) demonstrates that violations presuppose the existence of the violated norm. Therefore, the practice of violating international law – even repeated ones – does not negate international law, but rather demonstrates that it continues to function as a normative system that assesses, qualifies, and gives legal meaning to state actions. Second, the political nature of international law does not negate its validity but rather emphasizes its function as a

mechanism for limiting and regulating power in an unequal global order. International law indeed operates within the realm of politics and interests, but precisely because of this, it becomes a language of legitimacy contested by states. For Indonesia, awareness of this political nature should not breed cynicism, but rather encourage the rational and strategic use of international law. In conditions of global power imbalance, international law remains an important instrument for developing countries to build legitimacy, submit claims, and fight for national interests normatively.

Based on these conclusions, the Indonesian government is advised to position international law not merely as a formal normative commitment, but as a strategic instrument in the formulation and implementation of foreign policy. First, Indonesia needs to consistently frame every diplomatic position—whether on security, trade, environmental, or human rights—with legal arguments based on applicable international norms and principles. This consistency is crucial for strengthening Indonesia's international legitimacy and affirming its commitment to the global legal order. In this context, strengthening the capacity of state officials in international litigation, treaty negotiation, and international legal interpretation is a strategic necessity for Indonesia to optimally utilize international forums. Second, the Indonesian government needs to view the politicization of international law not as a threat, but as a space for contestation that can be utilized to legitimately and measurably advance national interests. In an asymmetrical global order, Indonesia should actively build coalitions with other developing countries to strengthen its normative bargaining position and encourage the strengthening of multilateral institutions as arenas for mutual legitimacy. This approach is in line with the doctrine of an independent and active foreign policy, in which Indonesia does not take sides in any political bloc, but remains active in shaping and utilizing international law as a mechanism for limiting power and a means of fighting for national interests within a legitimate and internationally accountable framework.

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